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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION NO.647 OF 2018

Gitesh s/o. Battersingh Kowachi & Ors. ..Applicants.

V/s.

State of Maharashtra ..Respondent.

Mr.V,N.Morande for the applicants.

Mr.M.B.Jawade, APP for the respondent-State.

CORAM: NITIN W.SAMBRE, J.

DATE : AUGUST 8, 2018

PC.:-

In Sessions Case No.42/2017, the applicants-accused are prosecuted for an offence punishable under section 5/28 of the Indian Arms Act, section 135 of the Bombay Police Act and sections 4 and 5 of the Explosive Substances Act. When the trial was at an advanced stage, PW8 Investigating Officer was examined on May 11, 2018. Since the counsel for the applicants remained absent when the said evidence was being recorded, the learned Sessions Judge ordered to proceed with the matter

without cross-examination. A request made by the applicants-accused on the very same day for recalling of the said witness was also not granted. As such, this application.

2. Mr.Morande, the learned counsel for the applicants-accused would urge that the *bona fides* of the applicants was established having regard to the fact that the applicants had moved a request for recalling of the said witness on the very same day. According to him, there is no intention or malafide attempted on the part of the applicants to delay the trial. He further assures that if given chance to cross-examine the said witness PW8 Investigating Officer, he shall not seek any adjournment and shall co-operate with the learned Sessions Judge in expeditious disposal of the trial.

3. The prayer is opposed by the learned APP. According to him, record depicts that though opportunity to cross-examine was offered, the applicants and their lawyer remained absent. As a consequence, the Sessions Judge was left with no other alternative, but to proceed with the trial. He submits that the

intention of the applicants-accused appears to be to delay the trial.

4. Considered rival submissions.

5. It is not in dispute that on May 11, 2018, the learned Sessions Judge recorded the evidence of PW8 Investigating Officer. The fact remains that the counsel for the applicants remained absent and as such, the learned Sessions Judge was right in proceeding ahead with the matter.

6. However, the fact remains that the applicants took out an application for recalling the said witness on the very same date i.e. May 11, 2018.

7. Considering the fact that the application for recalling the said witness was moved on the very same date, denial of such opportunity would amount to denial of principles of natural justice. In my opinion, a case for consideration is made out. The order refusing denial of cross-examination is hereby set aside. The assurance given by the learned counsel for the applicants-

accused that on the next date of hearing when P.W.8 Investigating Officer shall remain present, he shall cross-examine the said witness is accepted.

8. The order impugned as such, is hereby quashed and set aside with the above observations.

9. The application stands disposed of accordingly.

(NITIN W.SAMBRE, J.)